



Editor's Foreword

By Elizabeth Humphreys

— 'In Re Discovery' —

California Litigation's last issue devoted to discovery was published in the fall of 1989. The ensuing 10 years have seen remarkable changes in technology that have challenged practitioners to adapt time-honored discovery practices to meet the challenges of the "information age." This issue provides practitioners with a variety of articles focusing on how to use the discovery process to maximize the information obtained in each case while at the same time protecting the client's interests.

Thomas J. McDermott, Jr. and Janet M. Nolan offer a primer on the discovery of electronic information and a humorous "sidebar" predicting the future of discovery.

Steve Cochran and Angela R. Riley advise civil practitioners about the perils of criminal discovery, emphasizing the speed with which a criminal case may move from indictment to plea agreement or trial. The article provides civil practitioners with a "starting point" for preparing a defense in federal and state criminal matters.

Michael Bruno examines the art of preparing the bad witness for deposition and trial. He emphasizes the need for early preparation and planning to improve the witness' performance and minimize the impact of his or her testimony at trial.

Mark Waterman and Mark Kitabayashi explore privacy rights in our information society. They describe the discovery risks associated with the new information age and provide some basic rules to protect clients from discovery under the California Constitution.

Mark Hermann and Deborah Hamilton analyze whether an attorney may appeal an order imposing Rule 11 sanctions in a case in which the underlying litigation has been settled. The authors conclude that even when the litigation has been settled an attorney should be entitled to a review of any sanctions order entered against the attorney during the litigation.

Michael J. Abbott and Catherine L. Dellecker offer sage advice on surprise witnesses and the ethics of informal discovery. They recommend that practitioners consider the impact of informal discovery on the admissibility of evidence and the possibility of sanctions before assuming that "secret" evidence will win their case.

Gerald Clausen discusses the dim prospects for obtaining appellate review of an order compelling or denying discovery prior to an adverse judgment and explains how to maximize the chances of success on a writ petition.

The Honorable Ronald L. Bauer's Judicial Opinion resoundingly approves of discovery sanctions as restitution and compensation to a wronged party and admonishes attorneys not to confuse compensatory discovery sanctions with punitive sanctions for actions taken in bad faith.

— Looking Ahead —

Our next issue, "Bugs," analyzes bugs in the law both literally and figuratively. We will feature articles on the State Bar, protecting bugs in the environment, how to deal with difficult lawyers and privacy and the art of bugging .

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The journal is sent free to members of the Litigation Section.

The Litigation Section

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